UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,228	08/22/2006	Mauro Barbieri	NL 040199	1490

24737 7590 03/09/2010
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER	
RAHMJOO, MANUCHEHR	
ART UNIT	PAPER NUMBER
2624	
MAIL DATE	DELIVERY MODE
03/09/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/598,228	BARBIERI, MAURO	
	Examiner	Art Unit	
	MIKE RAHMJOO	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 January 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 3, 15, 17 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

As per claim 3, applicant recites "the number of images ...is not a fixed number". [81] teaches user allowed to change the layout, size and order of the images. There is no teaching of said number of images that is not a fixed number throughout the entire specification.

Claim 15 is rejected by the virtue of its dependence on claim 3.

As per claims 15, 17 and 19, applicant recites "the number of images incorporated in the icon is selected based on a sum of the importance of each of the images included in the icon being a certain minimal predetermined value". [68] of the specification recites "For instance, it may be required that the sum of the importance of each of the images included in the icon is minimal a certain predetermined value". It is

therefore pointed out that examiner fails to see any teaching of the subject matter in the above claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1- 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

All claims intrinsic with the coordinating conjunction "for", linking verb "to be", and the phrases "configured to" (i.e., claims 1, 11, 12, and 14) or "capable of" (i.e., claims 1, 11, 12, and 14) usually render the following element non-assertive or more simply passive. In others words that which follows "for", "to be", "adapted to", "configured to" and or "capable of" usually does not take place and is merely an intended use, thus non-functional and therefore most likely without patentable weight.

In general claim language with "for" usually only suggests intended use and adds no further limitation to the claims.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does

not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

(A) statements of intended use or field of use,

(B) "adapted to" or "adapted for" clauses,

(C) "wherein" clauses, or

(D) "whereby" clauses.

This list of examples is not intended to be exhaustive. See also MPEP § 2111.04.

Claim 13, for example, recites the word "comprising" numerous times. It is therefore unclear where the preamble ends and where the body of the claim starts. Other independent claims have similar issues.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1- 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Matraszek et al (US PAP 2003/ 0117651), hereinafter, Matraszek.

As per claims 1, 11- 14, Matraszek teaches a computer with instructions/ software and storage see for example [51] and fig. 1;

determining a relative importance (I.sub.1, . . . I.sub.N) of each image (1, 2, . . . N) of the group of images, wherein the relative importance Ij (for i= 1 to N) of each of the plurality of images (1,2,..., N) is a number between 0 and 1 (i.e., relative degree of interest to rank images as important/ favorite images is classified in a range of -10 to +10) see for example [25- 26] and [0076];

generating an icon composed of the selection of images based on the determined relative importance of each image of the group of images (i.e., computer system 10 automatically creating *an album page* of the five most favorite images) see for example [105]; and

determining the relative order of the selected image in the icon based on the determined relative importance of each image of the selected images(i.e., computer system 10 automatically creating *an album page* of the selected five most favorite images with the most favorite image P1 positioned in the center which is larger in size) see for example [105- 106]. [107] also teaches a picture map which is created automatically or by a user based on the personal affective information along with the positions locations selected and placed on the map.

Examiner's note;

As per claim 12 and figure 3, the computer program product is statutory subject matter under 35 USC 101 because of the program being loaded by the processor into the computer system illustrated in figure 3. The computer system of claim 12 requires

loading by a processor which is central to the applicant's invention.

As per claims 2 and 20, Matraszek teaches a presence of manual annotations in an image or explicit user rating of an image (i.e., user selection of a few images out of a dozen as special favorites and user annotation with voice) see for example [25] and [40] respectively.

As per claims 3, 16 and 18, in light of the rejections made and as best understood, Matraszek teaches wherein relative importance of each image evolves and changes every time a factor taken into account for determining the relative importance of the corresponding images changes and wherein the number of images that are selected to be incorporated in the icon is not a fixed number, but is a number adapted to based on the determined relative importance (I.sub.1, . . . I.sub.N) of each image (1, 2, . . . N) (i.e., the most favorite images with higher relative degree of interest for a user which is decided by the viewing time and the number of times an image is viewed and is changing and therefore is variable number see for example [76]). [28] also teaches changes in the affective information and [94] teaches changes in the rating associated with the affective information and [25] teaches a few images (corresponding to the number) out of a dozen as special favorites.

As per claim 4, Matraszek teaches the layout of selected images of the icon is selected based on the determined relative importance of the selected images (I.sub.1, . . . I.sub.N) of each image of the selected images (i.e., album layout automatically customized based on the personal affective information and the most favorite image positioned in the middle) see for example [105- 106].

As per claim 5, Matraszek teaches the size of each selected image in the icon is proportional to the determined relative importance (I.sub.1, . . . I.sub.N) of each image of the selected images (i.e., customization of the album pages in terms of size and the most favorite picture P1 located in the center and larger in size) see for example [60] and [105] respectively.

As per claim 6, Matraszek teaches the position of each selected image in the icon depends on the determined relative importance (I.sub.1, . . . I.sub.N) of each image of the selected images (i.e., the most favorite picture P1 located in the center and larger in size and selection of the position information as in more prominent location in the photoproduct of the one or more favorite images) see for example [105] and [115] respectively.

As per claim 7, Matraszek teaches the group of images comprises a plurality of stills from a movie(i.e., still images or a moving image such as a video clip which inherently includes a plurality of still for favorite images) see for example [25].

As per claim 8, Matraszek teaches the group of images comprise a plurality of icons, the plurality of icons representing a group of images, a movie, a computer program or application(i.e., moving image such as a video clip) see for example [25].

As per claim 9, Matraszek teaches the icon is a desktop(i.e., desktop for providing personal affective information such as favorite images to provide customized photoproducts) see for example [45].

As per claim 10, Matraszek teaches determining a relative order of selected images in the icon based on the determined relative importance of each image of the

selected images (i.e., automatic selection and placement of the favorite images based on the personal affective information and with pertaining proper places on the map) see for example fig. 7a- b and [107]. [105] and [115] also respectively teach the most favorite picture P1 located in the center and larger in size and selection of the position information as in more prominent location in the photoproduct of the one or more favorite images corresponding to a relative order of the based on the relative importance of each image.

As per claims 15, 17 and19 and as best understood, the number of images incorporated in the icon is selected based on a sum of the importance of each of the images included in the icon being a certain minimal predetermined value (corresponding to the measure of interest/ importance / or favoriteness as a sum and a weighted sum of three measures see [80- 81])

Response to Arguments

Applicant's arguments filed 01/29/ 2010have been fully considered but they are not persuasive.

In response to applicant's remarks 9- 11 wherein applicant points to MPEP 2131 and argues "Therefore, with respect to claim 1, to sustain this rejection the Matraszek reference must contain all of the above claimed elements of the respective claims. However, contrary to the examiner's position that all elements are disclosed in the Matraszek reference, the latter reference does not disclose creating "an *icon* that comprises a *graphic* in a *graphical user interface* configured to represent a group of

images ... the icon further being composed of a selection of images from the group of images ... wherein the relative importance Ii (for i = 1 to N) of *each* image of the plurality of images (1,2,..., N) is a number between 0 and 1 ... based on and adapted to the determined relative importance of *each* image of the group of images" as is claimed in claim 1" *and* " In contrast, the Matraszek reference discloses a method for using affective information recorded with digital images for producing an *album page*. As disclosed in Matraszek, an example of affective information is a "tag" or "flag", ssociated with an image, which indicates *whether or not the image has been identified* as a "favorite" or "important" image for the user. The *absence* of such a tag indicates that the image has *not been identified* as a favorite or important image for the user (emphasis added, see Matraszek, for example, at paragraph [0026]). In addition, while FIG. 7A of Matraszek shows a created album page containing five images, the album page of FIG. 7A is not "an *icon* that comprises a *graphic* in a *graphical user interface* configured to represent a group of images" as is recited in claim 1", examiner would point out the recitation as pointed out above has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Examiner would also point out

that as per rejection of the record said portion as recited is "configured to" and "adapted to" perform what applicant is claiming.

As per 35 U.S.C. 102 (b) rejection, Matrazek clearly teaches classification of images between a range of -10 to +10 with +10 representing the most favorite image and the figure 7a displays a grouping of five images with image p1 (most favorite classified as +10) placed in the middle with defined attributes such as size, color sharpness see [105]. It is not therefore clear what applicant argues by mere recitation of portions relied on by examine in the absence of valid arguments on behalf of applicant.

Applicant should submit an argument pointing out disagreements with the examiner's contentions. Applicant must also discuss the reference(s) applied against the claims, explaining how the claims avoid the references or distinguish from them. Furthermore "an icon...is configured to represent a group of images" as claimed.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Rahmjoo whose telephone number is 571-272-7789 (fax number 571- 273- 7789). The examiner can normally be reached on 8 AM- 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Bella can be reached on 571-272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mike Rahmjoo

February 26, 2010

/Matthew C Bella/

Supervisory Patent Examiner, Art Unit 2624